



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

[Docket DARS-2018-0038]

RIN 0750-AJ45

Defense Federal Acquisition Regulation Supplement:

Antiterrorism Training Requirements for Contractors (DFARS Case 2017-D034) .

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD) .

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirement for contractors to complete Level I antiterrorism awareness training.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]** .

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Trujillo, telephone 571-372-6102.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 42820 on August 24, 2018, to revise the DFARS to implement the

antiterrorism training requirements for contractors provided in DoD Instruction (DoDI) O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards (available at <http://www.esd.whs.mil/Directives/issuances/dodi/>). The rule will ensure contractors, who as a condition of contract performance require routine physical access to a Federally-controlled facility or military installation, are aware of the requirement for contractor personnel to complete Level I DoD antiterrorism awareness training. Routine physical access is considered more than intermittent access, such as when a contractor employee is required to obtain a Common Access Card. The training is required within 30 days of requiring access and annually thereafter and must be completed either through DoD-sponsored and certified computer or web-based distance learning instruction, or under the instruction of a qualified Level I antiterrorism awareness instructor.

There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule with regard to public comments; however, there are some minor editorial revisions incorporated. The definition of "military installation" at DFARS 204.7201, Definitions, and the clause at 252.204-7004, DoD Antiterrorism Awareness Training for Contractors, is updated to reflect more precisely the statutory definition at 10 U.S.C. 2801(c)(4) to address activities in a

foreign country. Additionally, the clause is updated to reflect the current secured weblink of <https:jko.jten.mil/> for information and guidance pertaining to the DoD antiterrorism awareness training. These minor editorial updates are administrative and have no effect on the public.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule creates a new DFARS clause 252.204-7004, Antiterrorism Awareness Training for Contractors, to advise DoD contractors of the requirement for its employees (and those of its subcontractors, if applicable) to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter, if, as a condition of contract performance require routine physical access to a Federally-controlled facility or a military installation. DoD plans to apply this clause to solicitations and contracts below the simplified acquisition threshold and to the procurement of commercial items, including commercially available off-the-shelf items (as defined in Federal Acquisition Regulation 2.101). This is necessary in order to reach as wide an audience as possible to ensure contractor personnel who are required to have routine physical access to a Federally-controlled facility or military installation are aware of this training requirement.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This final rule is necessary to implement the requirements of DoD Instruction O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, to ensure that

contractors complete Level I antiterrorism awareness training.

The objective of this final rule is to ensure contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are aware of terrorism threats and the proper responses to threat actions. In recent years, there have been terrorist events directed at Federally-controlled facilities and military installation and all personnel that routinely access those facilities need to be aware of the threat.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

It is expected that contracts that contain the clause at Federal Acquisition Regulation (FAR) 52.204-9, Personal Identity Verification of Contractor Personnel, are contracts that would require contractor personnel to have routine physical access to Federally-controlled facilities or military installations. According to data available in the Electronic Data Access system, in fiscal year 2017, DoD awarded 137,106 contracts containing the clause at FAR 52.204-9 to 15,814 businesses, of which 10,837 (68.5 percent) were to small businesses. Common Access Cards (CAC) are issued to contractors who require routine physical access to a Federally-controlled facility or military

installation. There are currently 507,665 contractors that hold CAC cards.

The rule does not impose any reporting or recordkeeping requirements.

There are no known alternative approaches that would accomplish the stated objectives. The impact is not expected to be significant, because current contractor employees who hold a CAC have already completed the requisite training and the cost of training new contractor personnel is at the expense of the Department. The time allotted for the training is approximately two hours per year. The training will provide safety awareness and precautionary measures that will benefit contractor personnel requiring routine physical access to a Federally-controlled facilities or military installations. This awareness not only benefits the contractor personnel, but also DoD civilians, military, and its assets.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Jennifer Lee Hawes,

*Regulatory Control Officer, Defense Acquisition Regulations
System.*

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Add subpart 204.72, consisting of 204.7200 through 204.7203, to read as follows:

SUBPART 204.72—ANTITERRORISM AWARENESS TRAINING

Sec.

204.7200 Scope of subpart.
204.7201 Definition.
204.7202 Policy.
204.7203 Contract clause.

Subpart 204.72—Antiterrorism Awareness Training

204.7200 Scope of subpart.

This subpart provides policy and guidance related to antiterrorism awareness training for contractor personnel who require routine physical access to a Federally-controlled facility or military installation.

204.7201 Definition.

As used in this subpart—

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

204.7202 Policy.

It is DoD policy that—

(a) Contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are required to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter; and

(b) In accordance with Department of Defense Instruction O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training may be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a qualified Level I antiterrorism awareness instructor.

204.7203 Contract clause.

Include the clause at 252.204-7004, DoD Antiterrorism Awareness Training for Contractors, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when contractor personnel require routine physical access to a Federally-controlled facility or military installation.

PART 212-ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 212.301 by-

- a. Redesignating paragraphs (f)(ii)(A) through (F) as paragraphs (f)(ii)(B) through (G), respectively; and
- b. Adding new paragraph (f)(ii)(A).

The addition reads as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ii) * * *

(A) Use the clause at 252.204-7004, Antiterrorism Awareness Training for Contractors, as prescribed in 204.7203.

* * * * *

PART 252-solicitation provisions and contract clauses

4. Add section 252.204-7004 to read as follows:

252.204-7004 Antiterrorism Awareness Training for Contractors.

As prescribed in 204.7203, use the following clause:

Level I Antiterrorism Awareness Training for Contractors (FEB 2019)

(a) *Definition.* As used in this clause—

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

(b) *Training.* Contractor personnel who require routine physical access to a Federally-controlled facility or military installation shall complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter. In accordance with Department of Defense Instruction O-2000.16 Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training shall be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a Level I antiterrorism awareness instructor.

(c) *Additional information.* Information and guidance pertaining to DoD antiterrorism awareness training is available

at <https://jko.jten.mil/> or as otherwise identified in the performance work statement.

(d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts, including subcontracts for commercial items, when subcontractor performance requires routine physical access to a Federally-controlled facility or military installation.

(End of clause)

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